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Improving drug policy – the potential of deliberative and participatory democracy

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Abstract

Policies concerned with illicit drugs vex governments. While the "evidence-based policy" (EBP) paradigm argues that governments should do 'what works', in practice policy makers rarely operate this way. Moreover EBP fails to account for participatory processes, particularly how concerned community members and those who use drugs might be included. The aim of this paper is to explore a more complex arrangement between 'expert knowledge' and democratic participation than the current EBP paradigm allows, in order to advance drug policy processes. An examination of deliberative democracy is followed by a move to discursive democracy and broader participatory processes. This work represents the beginning of our examination of this area, and we hope to spark new thinking and better drug policy action.

Keywords: Illicit drugs, policy, evidence-based policy, democracy, deliberative democracy, participation

1. Introduction

Now is a time of change in drug policy globally. Progressive policies are becoming more common, such as the legalisation of recreational cannabis in some US states and in Uruguay (Caulkins et al., 2015; NORML, 2016; Walsh & Ramsey, 2015). At the same time, more prohibitionist and strict regimes are evident, for example the influence of Russia and China in United Nations drug policy processes[1] (Jelsma, 2016), and the extrajudicial killings of people who use drugs in the Philippines (Baldwin & Marshall, Oct 18, 2016).

A key question thus arises: what should governments do about illicit drugs? This is a complex, difficult policy problem, for many reasons. Firstly it is multidimensional and spans multiple government portfolios, including Education, Health, Policing, and Attorney's General. There is not one single Ministry or government department necessarily responsible, and nations vary in the extent to which they designate authority to a particular

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[1] "As resistance from the U.S. had softened, influenced by domestic policy changes, Russia began leading the opposition, supported by traditionally strongly prohibitionist countries like Japan, Iran, Pakistan, Cuba, and China. […] The polarized positions over issues like the death penalty, harm reduction, decriminalization, and "new approaches" led to prolonged negotiations, boding darkly for preparations for UNGASS2016" (Jelsma, 2016, p. 15).

department to take the lead (and this choice will often frame the government response. For example where law enforcement ministries, or ministries concerned with "social evil prevention"[2] are designated as primarily responsible for drugs policy, the policy responses tend to be police-directed, in contrast to where health departments are responsible). Secondly the policy problem is jurisdictionally multi-level: nations are bound by international expectations (eg reducing global trafficking) and laws (the UN drug treaties/conventions); as well as having domestic national policies alongside state (and local) policies. Australia, for example, is signatory to the UN Drug Conventions at the federal level, but it is the drug laws at the state level which specify prohibitions on personal use or possession of illicit drugs. Thirdly, it is a policy domain characterised by goal conflicts. For some government officials the appropriate drug policy goal is the protection of individuals who use drugs from harm; for others it is the reduction of the prevalence of use across the population; for others it is the protection of the community from consequences of drug use (eg crime); and for some it may be some balance between these three contrasting goals. A fourth challenge for governments is that often there are policy trade-offs. For example, the introduction of pill testing facilities for young people at music festivals may reduce the likelihood of an overdose, but may also be thought to encourage greater drug use if it is perceived as being 'safe'.

In a democracy, the legitimacy of a government and of particular pieces of legislation depends on them remaining under contestation from members of the public. So governments and their institutions must be able to respond to the opinions and needs of constituents. To quote Arendt: "It is the people's support that lends power to the institutions of a country, and this support is but the continuation of the consent that brought the laws into existence to begin with […] All political institutions are manifestations and materializations of power; they petrify and decay as soon as the living power of the people ceases to uphold them" (Arendt, 1972, p. 140). In drugs policy, governments need to contend with strong and often opposing community views. One example of this is family responses when a child dies from a drug overdose. Parents who become engaged in advocacy can respond to this tragedy in two ways: there are those who call for greater

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[2] In Vietnam, the Department of Social Evils Prevention is part of the Ministry of Labour, Invalids and Social Affairs. See: https://www.vietnambreakingnews.com/tag/department-of-social-evils-prevention/

control, more policing and stronger prohibition (Wood, Nov 30, 2015); and those who call for leniency and harm reduction measures (Trimingham, 2009).

Public opinion surveys wash out this diversity. By way of example, Table 1 provides the average Australian public opinion on three drug policy measures: needle syringe programs, regulated injecting rooms, and legalisation of heroin use.

Table 1: Australian public opinion on three drug policy measures

Policy support for	General population (NDSHS: n=24,898)
Needle and syringe programs	
Strongly support/ support	53.0%
Oppose/ strongly oppose	12.8%
Don't know enough to say	22.7%
Regulated injecting rooms	
Strongly support/ support	39.8%
Oppose/ strongly oppose	23.9%
Don't know enough to say	22.7%
Legalisation of heroin use	
Strongly support/ support	5.5%
Oppose/ strongly oppose	4.6%
Don't know enough to say	81.9%

Source: Lancaster, K., Ritter, A., & Stafford, J. (2013). Public opinion and drug policy in Australia: Engaging the 'affected community'. *Drug and Alcohol Review*, *32*, 60-66.

Importantly, one can note that a relatively high proportion "don't know enough to say" (23% for the first two and 82% for legalisation of heroin). This "raw" public opinion (Fishkin, 2009) therefore may mislead governments about the preferred policy responses of the community.

Furthermore, the general population are not necessarily those most directly affected by drug policies. The voices and opinions of people who use drugs are rarely heard (Lancaster, Santana, Madden, & Ritter, 2015; Lancaster, Sutherland, & Ritter, 2014) . The extent of stigma and marginalisation associated with illicit drug use is crucial to understanding the experiences of people who use drugs, and their engagement in policy processes (Barry, McGinty, Pescosolido, & Goldman, 2014; Link & Phelan, 2001; Lloyd, 2013; Room, 2005).

Table 2 expands on Table 1 to now include the average views of people who inject drugs, which stand in contrast to the general population.

Table 2: Australian opinions towards three drug policy measures: people who inject drugs contrasted with the general population

Policy support for	General population (NDSHS: n=24,898)	People who inject drugs (IDRS: n=839)
Needle and syringe programs		
Strongly support/ support	53.0%	96.8%
Oppose/ strongly oppose	12.8%	1.0%
Don't know enough to say	22.7%	1.8%
Regulated injecting rooms		
Strongly support/ support	39.8%	80.5%
Oppose/ strongly oppose	23.9%	8.6%
Don't know enough to say	22.7%	4.7%
Legalisation of heroin use		
Strongly support/ support	5.5%	54.9%
Oppose/ strongly oppose	4.6%	33.1%
Don't know enough to say	81.9%	2.2%

Source: Lancaster, K., Ritter, A., & Stafford, J. (2013). Public opinion and drug policy in Australia: Engaging the 'affected community'. *Drug and Alcohol Review*, *32*, 60-66.

Returning to the original question (what should governments do about illicit drugs?[3]), and given the complexities as detailed above, one solution that has been promulgated is "evidence-based policy" (EBP). Evidence-based policy in its pure form and derived from evidence-based medicine values a technical rationality (Lin, 2003) where expert knowledge is seen as the basis for policy decisions. The arguments for evidence-based policy include that it provides a rational basis to design policy, and steps away from morality or ideology. It is of course subject to its own underlying ideology encapsulated in the catch-phrase "what matters is what works"(Solesbury, 2001, p. 7) . It is seen as a rational and progressive response, that favours policies which have been demonstrated (through scientific inquiry) to reduce the health, social and economic harms of illicit drugs.

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[3] We are aware that in this paper 'the problem of drugs' is to some extent taken as fixed and given, and the question we address is what should be done about it (and what the role of citizens/deliberation might be in making those solutions better). There are, however, other broader concerns, not addressed here, about how the 'problem' comes to be shaped and made in both EBP and in participatory processes, and the alternate (and multiple) meanings which might be given to and enacted in the 'problem' of drugs.

Despite the apparent logic and face validity of EBP, it has been subject to review and criticism. Crudely, we identify three critical departures from 'pure' EBP[4] associated with various bodies of work. The first concerns the failure of governments to adopt the evidence and hence the scholarly focus is on understanding and redressing the barriers to evidence adoption (Botvin, 2004; Nutt, 2012; Ritter, 2009). The assumption underpinning this body of work is usually that if governments adopted 'what works', drug policy would be improved. This first departure also aligns with a view of policy-making as authoritative choice (Stevens & Ritter, 2013). The second departure from 'pure' EBP is critical of EBP's simplistic, instrumental view of the relationship between evidence and policy (Hughes, Ritter, Lancaster, & Hoppe, 2017, in press; Lancaster, Ritter, & Colebatch, 2014; MacGregor, 2013; Ritter & Bammer, 2010; Ritter & Lancaster, 2013). It contends that evidence is not the sole driver of public policy and that other forces and factors (such as the influence of different policy actors, lobbying activities, interest groups, the media, and electoral cycles) can account for policy action. It aligns with a notion of policy-making as structured interaction (Stevens & Ritter, 2013). This second body of work sees research evidence as one input amongst many and the scholarly endeavour concerns better understanding the multiple forces that impact on policy (and for some, strategies to enhance how evidence can better compete with these other forces).

The third critical departure takes a fundamentally different epistemological and ontological stance, and seeks to critique EBP's more positivist, technocratic and instrumentalist commitments. Drawing on insights from social constructionism, poststructuralism, science and technology studies and feminist science studies, this literature highlights the ways in which policy 'problems' are not fixed and stable, waiting to be solved through the authoritative actions of government, but rather *made in* and *produced through* policy-making. This literature highlights the productive and constitutive effects of situated material discursive-practices including policy processes, evidence-making and knowledge claims, and emphasises the emergent and contingent nature of problems, political subjects (e.g. the targets of policy, or 'publics'), and even the object of 'evidence' itself (Fraser, 2011;

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[4] These three critical departures are observed in the drugs policy and EBP literature, and may not accurately characterise or encompass other areas of public policy, although there is a vast literature on EBP that conforms to these critiques: eg Carol Weiss, Katherine Smith, Sandra Nutley.

Lancaster, 2014; Lancaster, 2016; Lancaster, 2012; Standring, in press; valentine, 2009). This third view destabilises underlying assumptions and holds the promise of ruptures, which open up new ways of thinking and doing policy[5].

In this paper we commence exploring a fourth departure from EBP which posits the need for a far more complex arrangement between expert knowledge and democratic participation than allowed for in the EBP paradigm. The key criticism of EBP from this fourth perspective is its inability to integrate a diversity of voices and knowledges that arise from sources other than 'evidence' or 'science'. EBP currently places the scientific endeavour at the apex of policy responses, and privileges researchers and experts over other stakeholders and affected publics (Lancaster, 2017b; Ritter, 2015). Our desire is to see whether there are ways in which the privileging of 'scientific evidence' and experts might be rectified.

2. The aims of this paper, an overview of the argument, and danger ahead

In beginning to consider a more complex arrangement between expert knowledge and democratic participation in drug policy decision-making (with the potential then to recast the current EBP paradigm), in this paper we review and examine approaches to and theories of democratic deliberation and participation. As noted by others, this is currently a popular and growing field {Pateman, 2012 #3;Ercan, 2015 #20}[6]. We take a wide view: starting with classical deliberative democracy (with its focus on inclusion, reasoned discussion and conditions of the 'ideal speech situation'). We find much similarity between classical deliberative democracy's reasoned deliberation (where the force of the better argument wins the day) and the EBP paradigm. However, we are also left with misgivings about deliberative democracy: notably concerned with (1) the potential exclusion of marginalised views (in representative sampling approaches); (2) the authorised modes of communication

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[5] As can be seen, our work spans all three of these critical departures from 'pure' EBP, and we do not wish to draw firm boundaries between approaches that improve the uptake of evidence into policy (the first), analyse the multiple actors, power and interactions that characterise drug policy processes (the second) nor the post-structural, constructivist theorising (the third departure). Indeed, we draw on all three of these in our following analysis of the potential for democratic participation.

[6] Notwithstanding Pateman's (2012) observation that much of what is called "participatory budgeting", as one spreading movement of participatory democracy, is not more than information and consultation (and not consequential to decision-making, nor in her terms "the beginnings of democratization" p. 14).

as mechanisms of power[7], with hidden norms such as what counts as reasoned deliberation, linked to which is; (3) authorised knowledge and what counts as valid knowledge; and (4) the difference between *contestatory* processes boundaried by agreed rules compared to *conflict* (considered here as un-boundaried). As a result we turn to discursive democracy (and deliberative systems) that affords a more generous engagement of multiple voices, modes of communication (such as through protest or storytelling), knowledges , , and the potential to consider conflict as productive. Throughout we draw on our own expertise in illicit drugs policy[8] and explore the implications of these approaches for advancing drug policy. We conclude with a call for others to join us in building this approach to drug policy formation. Our commitment is to improving the decisions that governments make about illicit drugs and as a result reducing drug-related harm. We are also committed to reducing stigma and exclusion, recognising participatory democratic mechanisms as constitutive and productive of political subjects with implications for citizenship and inclusion.[9]

Danger ahead

Before turning to theories of democratic participation and how they may be applied to drugs policy, we want to note that this is a very challenging time to be both critical of 'science' and championing democratic participation. The current populist political movements around the world – Brexit and Trump for example – have facilitated an emerging elitism suggesting that 'the public don't know what's good for them' in some discussions (Saltelli, 2016) drawing into question democratic processes and expressions of the people's will, but bringing to the fore the politics of expertise (Clarke & Newman, 2017).

To be critical of evidence-based policy (and by implication the role of science and expertise in liberal democracies) is to potentially court heresy, at a time of:

- "Post-truth"
- Alternative facts and "fake news"
- Attacks on science, and science funding

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[7] Following Foucault (1971)

[8] The first two authors. The third author brings her expertise in philosophy and bio-political theory.

[9] Through these mechanisms, people who use drugs might be recast/remade as political subjects, valuable citizens, and people who have knowledge.

In response, scientists globally have formed their own protest (as evidenced by the "March for Science", held on 22nd April, 2017 [10]). There is cynicism among researchers about the value of knowledge other than that derived from empirical inquiry. This is neatly represented in the mocking bastardisation of the well-known "evidence-pyramid" [11].

Figure 1: "I just know" replaces systematic reviews at the top of the evidence pyramid
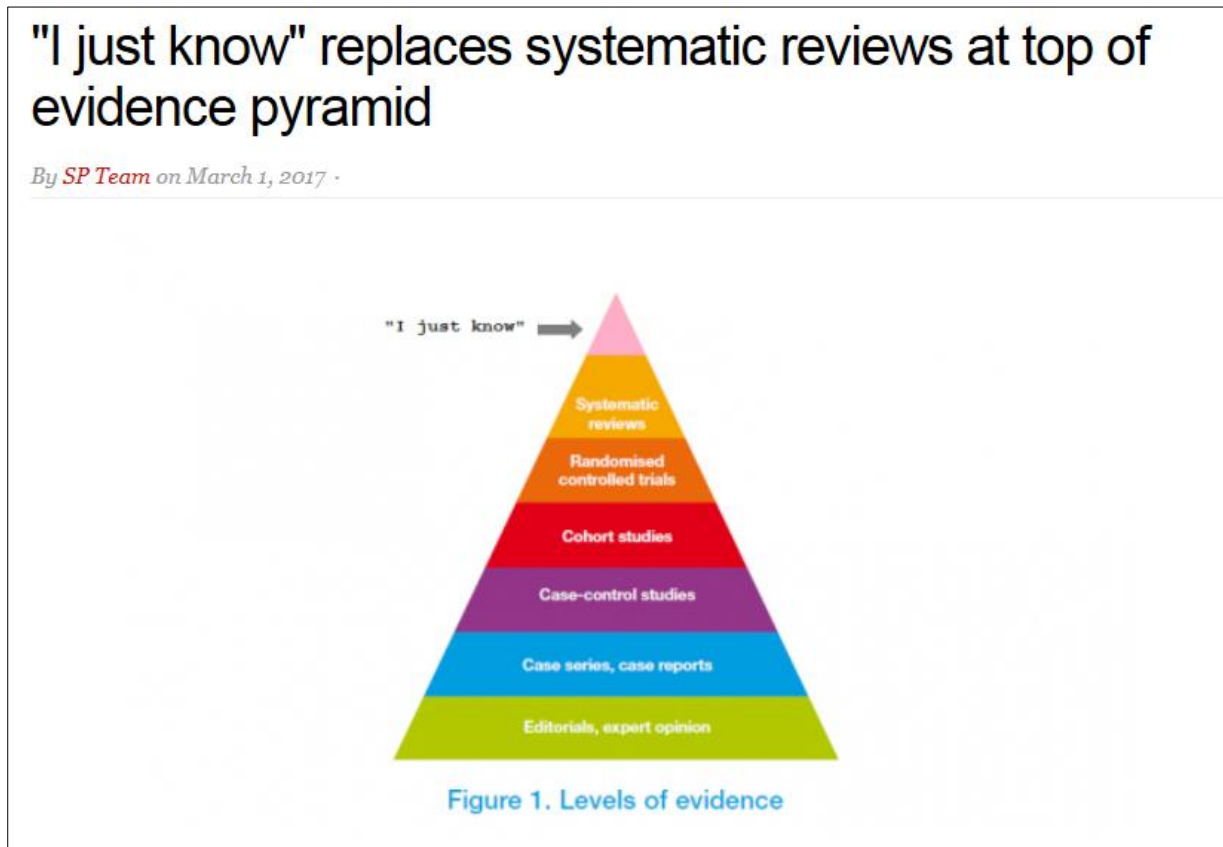
However, there are also voices arguing for a greater appreciation of the limits of 'science'. For example "Science will have to […] abdicate its protected political status and embrace both its limits and its accountability to the rest of society" (Sarewitz, 2016). And these are not new dilemmas. In STS work, for example, Jasanoff in 2005 argued that the founding assumptions underpinning liberal democracy (that representative governments can discern citizen preferences; that institutions are knowledgeable enough to regulate science and

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[10] https://satellites.marchforscience.com/
[11] We found this bastardisation amusing, but we should note that it was doing the rounds on social media sites as a pithy visual of all that is currently wrong with policy making and democracy.

technology wisely; and that citizens have meaningful opportunities to participate) are all questioned in an era where there are substantial, complex scientific and technological advances (Jasanoff, 2005).

The concerns about democratic will, cynicism by scientists, defensiveness of the role of scientific inquiry in the policy process, and fears surrounding the political implications of an apparent populist revolt against expertise create a potentially uneasy environment for the project we describe herein. We would argue, however, that these contextual factors actually make this work all the more timely, important and significant. As noted by Mansbridge et al. (2010), while the use of experts is a sensible division of labour, the problems associated with the delegation of policy to experts includes the promotion of citizen ignorance. Expert disrespect of citizen engagement (she uses the term 'contribution') "provokes a reciprocal disdain of experts on the part of citizens" (p. 14). This self-perpetuating vicious cycle, and the exclusion of non-experts from policy deliberation, "threatens the foundation of democracy itself" (p.14). Similarly, Jasanoff argues that the moment that trust in people fails is the moment that democracy fails (Jasanoff, 2005, 2013)[12]. Furthermore the public is the "proving ground for competing knowledge claims" and the "theatre for establishing the credibility of state actions" (Jasanoff, 2005, p. 258). [13]

Good drug policy matters: aside from the social, health and economic burden of drug use (Collins & Lapsley, 2008; Degenhardt et al., 2013), people die of drug overdoses, or are killed by police and military acting on behalf of their governments (Baldwin & Marshall, Oct 18, 2016) and the stigma and marginalisation continue. At present, there is little traction for new solutions, and the prevailing evidence-based policy discourse privileges expert knowledge at the expense of broader, inclusive democratic engagement and multiple types of knowledges.

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[12] Jasanoff also talks about 'technologies of humility" – the need for science to restore public trust by acknowledging the uncertainties and unknowns in science.

[13] See also earlier Arendt

3. Deliberative democracy

In response to the perceived failings of representative democracy (Grönlund, Bächtinger, & Setälä, 2014a), there has been substantial interest in deliberative democracy.[14] In the more restrictive definition[15], and consistent with what is termed Type I deliberation (Bächtiger, Niemeyer, Neblo, Steenbergen, & Steiner, 2010) deliberative democracy is an endeavour to engage in rational, impartial, inclusive and egalitarian deliberation, where issues can be carefully weighed, and listened to with an open mind, and where the force of the better argument wins the day.[16] . Multiple perspectives are encouraged but prefaced by mutual respect. For Habermas, the 'deliberative ideal' requires reflexivity: minimising conflict, ensuring impartiality and reciprocity (inclusion and equality), such that "procedurally correct decisions" can be derived (Habermas, 2006, p. 416). Delinked from electoral democracy, yet consequential (a point taken up below), deliberative democracy in drugs policy would potentially provide the opportunity for considered, rational discussion of, for example, the laws regarding drug use and drug supply, the role of police in responding to drug use and drug supply, harm reduction strategies such as supervised injecting centres, the availability of treatments, the extent to which coerced treatment is appropriate, and the availability of cannabis in a regulated market. For some of these issues, there is but a slim scientific "evidence-base"; for all of them strong views are held by interest groups, experts and people who use drugs.

Mini-publics (Ryan & Smith, 2014) are instances of deliberative democracy that conform to the three key features of deliberative democracy: they are institutions[17] which are (1) inclusive and representative of the population and diversity of views; (2) entail structured deliberation; and (3) are consequential or at least aim to align the "political decision-making

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[14] We note the problem of characterising a vast, multi-disciplinary literature and distilling what we see as the key features of deliberative democracy , when in fact there may be more difference between classical deliberative democracy theorists than between these and the discursive democracy theorists we consider in the next section.

[15] We take up a broader definition and consider discursive democracy in the later section.

[16] In line with Habermas' original conception of the 'ideal speech situation' where communication mobilises and collects information, there are 'proper' arguments made and rational evaluation of the assertions on the basis of reason, in a situation where participants are reflexive and free from coercion (Bohman & Rehg, 2014; Habermas, 2006).

[17] The labelling of mini-publics as institutions reflects their formal role, with sets of procedures or rules, as opposed to an informal gathering of people.

with the considered views of citizens" (Ryan & Smith, 2014, p. 20). Strategies and techniques of deliberative democracy have been well documented:

- Citizen's Juries
- Citizen's Assemblies
- Deliberative Polling™
- A variety of "mini-publics" processes (eg Summits, roundtables)

A summary of these and other dialogic methods can be found in McDonald, Bammer & Deane (2009).

The theory and practice of deliberative democracy is a rich field (Grönlund, Bächtinger, & Setälä, 2014b) covering analysis of procedural criteria: inclusion, effective participation, enlightened understanding, voter equality, and control of the agenda (Dhal, cited in O'Flynn & Sood, 2014); issues surrounding decision-rules (individual vote versus collective consensus, and within the latter majority or unanimity, (Bächtinger, Setälä, & Grönlund, 2014; Caluwaerts & Kavadias, 2014; Fishkin, 2009); and the variety of techniques and challenges associated with representative sampling (Fishkin, 2009).

The quality of the deliberation has been extensively discussed in the deliberative democracy/mini-publics literature. For example Fishkin (2009), regards high quality deliberation as entailing:

1. Information – that is accurate and relevant
2. Substantive balance – all arguments given, balanced
3. Diversity – "the extent to which the major positions in the public are represented by the participants" (p. 34)
4. Conscientiousness – sincerely weighing the merits of the argument
5. Equal consideration – arguments offered are considered on equal merit, regardless of which participant offers them (p. 34, 160)

The three key features of this deliberative decision-making process are of particular relevance to drugs policy: inclusion (political equality); thoughtfulness (deliberation); and impact (that it is consequential in decision-making) (Fishkin, 2009). With reference to

inclusion, this would improve current drugs policy processes which are usually not inclusive. They not only exclude people who use drugs[18], but also non-elite experts. Deliberative democracy seeks to be inclusive through representation, largely achieved by random sampling of the population to select participants. A key challenge for deliberative democracy processes in drugs policy though, is the necessary restriction that random sampling may place on inclusion. The population prevalence of illicit drug use in Australia (last year use) is 12.6% (Australian Institute of Health & Welfare, 2017), of which the majority is cannabis use (10.4%). With less than 2% of the Australian population engaged in injecting drug use in any one year, a random sampling strategy is unlikely to result in participation of this affected community[19]. This also raises questions about who is the 'demos'[20]. Strategies can be used to overcome some of the representative sampling issues, for example in Deliberative Polling[TM] oversampling has been used to ensure those affected are represented (eg the Australian Aboriginal DP (Fishkin, 2009).

The second key feature – deliberation – which includes accurate, balanced information which represents the diversity of positions and creates the space for assessing the arguments equally on their merits – is consistent with an evidence-based policy perspective. Drug policy discussions often do not include all relevant information, are not balanced, there is limited permission for views outside those already deemed acceptable (such as either prohibitionist views or legalisation views), and arguments are not considered on equal merit. To give one example: the expert debate about the "Failed War on Drugs" rarely represents balanced information (Gray, 2010). The principle of participation also addresses another concern in drug policy discussions – the use (and misuse) of raw public opinion. As noted earlier, many members of the public do not hold an opinion about aspects of drugs policy, and deliberation brings the possibilities for evidence of various kinds to be considered, and considered thoughtfully.

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[18] With some limited exceptions – eg limited representation through drug user organisations in particular processes.
[19] Arguably, though, anyone who has used drugs at some point in their life (which as at 2016 in Australia is reportedly 37.1%) has been affected by drugs policy (and this does not include their families and friends). But they are not representative of people who currently use drugs (indeed, their views may systematically differ, and in that sense are an important sub-group to include).

[20] This issue has been well-covered in the deliberative democracy literature more generally, for example (Chalmers, 2015; Fishkin, 2009; O'Flynn & Sood, 2014).

The third key feature is that the deliberative process should result in an impact on decision-making. Given our commitment to drug policy reform, this is perhaps the most important component of any deliberative process. Yet in reviewing the literature, it becomes apparent that this may be the most challenging aspect. As noted "too few mini-publics have had a discernible impact on actual policy-making" (Bächtinger et al., 2014, p. 226). Clearly the way in which the mini-public or deliberative process is authorised and forms part of the institutional decision-making is crucial, and this will vary depending on each deliberative process.[21]

In summary, we observe alignment between the EBP paradigm and deliberative democracy inasmuch as it provides a deliberative space to consider all the evidence in "reasoned discussion", with representative citizens, treated equally, and in association with balanced arguments. It departs from EBP inasmuch as it does not necessarily privilege the elite experts, but engages a representative sample of the population in deliberating about drug policy. However, we have some misgivings.

There is a risk associated with deliberative democracy in our view, and that is its potential appropriation by the discourse of the so-called Public Understanding of Science. The Public Understanding of Science position, put simply, is that if the public were better informed and educated about the evidence about drugs and drug policy, they would agree with the experts (but see alsoMooney, 2010). It aligns with the "deficit model" which is concerned with perceived deficiencies in the public's scientific literacy (Michael, 2016, p. 82). In this model, the underlying assumption is that deliberative processes will result in conclusions that would have been drawn by the experts. This position aligns with the evidence-based policy paradigm, and effectively sees deliberative processes as a way to reinforce the scientific consensus or to legitimate expert decisions. If this is the case, then why not let the

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[21] The lead author (AR) facilitated two Australian Parliamentary drug summits in 2016: one federally (held at our national Parliament House; the other at the state NSW parliament. While both entailed a collection of experts, people who use drugs, and interest groups (but not necessarily or by design representative, nor necessarily fully inclusive), and both were 'authorised' inasmuch as parliamentarians convened and attended, neither resulted in policy reform as the findings/recommendations/conclusions were not explicitly linked to a decision agenda.

decision-makers consult the experts directly and save time and resources (as discussed in Bächtinger et al., 2014)?

The second concern is regarding the authorised modes of communication within deliberative democratic processes, linked to which is authorised knowledges. While it is very clear that expert knowledge is the key driver in EBP which affects not only what kind of knowledge is relevant but also who may legitimately speak(Lancaster, 2017a)), we are less clear about how expert knowledge and other knowledges are valued within deliberative democracy approaches, and whether the practices and discourse of deliberative democracy might privilege particular kinds of knowledge (or modes of thinking and doing) over others. On the one hand, the notion of 'rational' discourse, the 'ideal speech situation' and the preparation of 'information that is accurate and relevant' seem to imply a preferencing of expert knowledge, and also operate as mechanisms of power with hidden norms requiring participants to speak and practice within accepted modes in order to be seen as legitimate. It is hard to draw conclusions that vary from scientific consensus if it is science-inspired modes of thinking and doing (eg rationality/impartiality/objectivity/logic) which are inadvertently privileged. On the other hand, it is clear that deliberative processes are not confined to information that is 'scientific' but they include all types of knowledges, such as the anecdotes and personal experiences of the participants as well as value-based concerns from a range of perspectives. We remain unclear[22] about the extent to which different theorists and practitioners of deliberative democracy actually accommodate other types of knowledges, especially given the potential delimiting and coercive effects of 'respectful argumentation'. This is particularly important to us given our aim of giving voice in policy processes to a marginalised and stigmatised sub-population (people who use drugs), where the very notion of 'rational' discussion may serve to inadvertently privilege particular skill-sets and modes of engagement (such as systematic reasoning and objectivity), and keep other ways of thinking and doing (for example, knowledge gleaned through lived experience, or emotion) at the margins, thus hindering genuinely inclusive and equitable participation (Lancaster, 2017a).

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[22] Despite the helpful distinction between Type I and Type II deliberation: where Type I deliberation conforms to the Habermasian notion of rational discourse, and Type II is apparently more flexible, and includes multiple modes of communicating (such as anecdote, storytelling) (Bächtiger et al., 2010).

Meanwhile, at today's meeting on feline healthcare...

We are also concerned about the potential for restrictive participation; deliberative democracy norms such as mutual respect may decrease the likelihood that drug policy activists (who may be seeking radical change in ways which fundamentally challenge the status quo) are included. Non-deliberative acts, such as drug protest rallies and campaigns[23] can provide important avenues into alternate views on the issues around drugs and/or provide new frames. In a policy area characterised by discourses of deviance and criminality already, the limiting effects of rational participation and absence of 'protest' may be particularly damaging to the democratic participatory intent.

These various concerns with deliberative democracy as characterised above are not novel. Others (including Mansbridge, Dryzek, Pateman[24] among others) (see also Bächtiger et al., 2010) have noted these problems and have raised other concerns regarding the focus on formal institutions, which delimits the sites and modes of deliberation. For drugs policy, and the affected communities, there may be more informal and/or systemic opportunities for

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[23] For example (Unharm, 2014)

[24] Pateman's position extends beyond these (perhaps procedural) concerns and is a larger vision for participatory democracy that needs to "disturb existing institutions" (p.15) given the undemocratic authority structures and the inter-connectedness of individual's participation with structural authority (Pateman, 2012).

participation. Another concern raised that has struck a chord with us is the worry that deliberative democracy has reduced the likelihood of advances in mass participation[25] (Chambers, cited in Niemeyer, 2014). Here, we are concerned that a singular focus on deliberative democracy as outlined above may be seen as 'enough' or 'sufficient' for this policy area. It is not, and consideration of mass participation is vital.[26] While the proportion of the population who use drugs is a minority, the impact of drugs and drug use is across the entire community. Finally, the deliberative democracy literature gives the impression that the goal is to minimise conflict within the deliberative process. This seems restrictive, and limits the application to the drugs policy field which invariably involves heated debate, emotional presentations, and high levels of conflict. Can this be productive? Discursive democracy holds promise for a consideration of these issues with respect to drugs policy.

4. Discursive democracy and the systemic turn

'Discursive democracy' is a term that has been applied to a new wave of thinking emerging from the field of deliberative democratic theory. We think it addresses a number of the concerns we raised above. It appears to provide for a more expansive, organic deliberative process, that allows for messier discussion, with more sites and practices along with opportunity for other modes of communication (for example stories, humour). Consistent with the idea of multiple sites, practices and languages, there is permission for a contestatory (and perhaps conflictual) process not limited to "rational argumentation" or achieving "consensus" (Ercan & Dryzek, 2015, p. 242).

Theorists, such as those from interpretivist critical theory (Ercan & Dryzek, 2015; Mansbridge et al., 2010) have variously labelled this move as "discursive democracy" or "deliberative systems". It has also been characterised as Type II deliberation (Bächtiger et al., 2010).[27] Discursive democracy is consistent with the idea that the practices of deliberation (or communication) bring into being and constitute objects, problems and subjectivities,

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[25] Recalling that here we are still describing circumscribed deliberative forums, not deliberation by the masses.

[26] Others have noted the need to move deliberative democracy and mini-publics to mass participation (Bächtiger et al., 2014; Niemeyer, 2014), arguing that mini-publics could be the precursor to mass participation (for example holding a mini-public prior to a referendum to bring the various arguments to bear), or as societal capacity-building (improving the deliberative capacity of citizens) (Niemeyer, 2014).

[27] Habermas' later work is seen as consistent with Type II deliberation (Bächtiger et al., 2010).

forming and contesting the shape and meaning of both the problems and solutions being addressed.

Dodge (2015) provides some criteria for this 'discursive democracy' notion, which highlight its distinction from deliberative democracy (p.252, Table 1) including "sensitivity to the expression of inchoate demands"; "sensitivity to the diversity of language that may be mobilized to express such demands"; "responsiveness and engagement with demands"; "openness to appeal and counter-appeal"; and "critical self-scrutiny and scrutiny of democratic procedures, processes and institutions". For Mansbridge et al. (2010) the sites of discursive democracy can span formal legislative venues, mini-publics, as well as protest actions, inasmuch as it is the systemic network of these various venues, institutions, practices and processes that contribute to an ideal "deliberative system" (whilst also noting that the end-point is how the system functions as a whole, and the complementarity of the practices and processes).

A key issue appears to be reconciling the goal (deliberation; *thinking about* in inclusive democratic forms) with the more permissive set of communication modes beyond rational argument, including contestataion and conflict. We note that a number of theorists include a rider when discussing communication modes, such that 'deliberation' must be reflective .[28] For example: "deliberation is not just about communication, it is also about listening and reflecting" (Ercan & Dryzek, 2015, p. 244). It remains critical that participants to this contestatory process can and do listen and reflect. Arendt, who viewed contestation of the status quo as a key component to the collective speech and action at the centre of what she calls the "political", noted: "Political thought is representative. [Not in the sense of thinking on behalf of others, rather,] I form an opinion by considering a given issue from different viewpoints, by making present to my mind the standpoints of those who are absent; that is, I represent them … The more people's standpoints I have present in my mind while I am pondering a given issue, and the better I can imagine how I would feel and think if I were in their place, the stronger will be my capacity for representative thinking and the more valid my final conclusions, my opinion" (Arendt, 1977, p. 241).

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[28] For example "if and when underpinned by the right institutional and discursive conditions" (p. 360, Ercan & Dryzek)

Space does not allows us to address all aspects of discursive democracy including the notion of a systemic analysis of drug policy as a democratic deliberative system (which would entail analysis, in any one site, of the variety of deliberative, discursive and 'communicative' actions, as well as analysis of the various 'publics' which drug policy calls into being)[29]. We concentrate here on the issue of allowing for conflict and contestation, as it appears to be an important contrasting feature between deliberative and discursive democracy. It is of particular interest to us as drug policy scholars because of our experience of the tensions in including multiple voices in some participatory processes[30],[31].

In the classical deliberative democracy detailed earlier, conflict is inconsistent with the principles of good quality deliberation. For example, Fishkin notes that "aspirations [of the deliberative process] could, or course, be defeated by the intensity of conflict" (Fishkin, 2009, p. 160); "a legacy of conflict […] may leave them inured to any appeals about a shared public good" (Fishkin, 2009, p. 161). Because "for the process to work, participants must also be willing to grant *equal consideration* to the arguments offered by all participants regardless of who they are" (p.161, emphasis in original). The underlying assumption is that conflict is unproductive and inconsistent with reflexive, respectful, reasoned communication. Here it becomes clear that subtle but complex differentiation of contestation, conflict (and their relationships with consensus) is required. For our purposes here, we consider contestation to be boundaried and consistent with classical deliberative democracy. So our interest is in exploring 'conflict'.

In drug policy deliberation, we are seeking to incorporate a diverse, inclusive set of views, experiences, affects, and arguments where conflict is likely to be inevitable. Indeed, we may

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[29] Nor do we extend out to the structural reform of institutions (Pateman).

[30] In Australia, drug user organisations (people who represent people who use drugs) are generally present in existing policy dialogues (such as the two Summits mentioned earlier). However, the staunch conservatives are generally avoided, aside from their participation on a previous Prime Ministerial committee, the Australian National Council on Drugs.

[31] There is a whole other story in the alcohol policy field, and active debate about the extent to which industry should have a voice at the policy table (Casswell et al., 2016; Thornton & Hawkins, 2017) but no discussion or debate about how people who consume alcohol are presented in dialogic policy processes.

even argue that conflict is essential if the true breadth and depth of experiences, knowledges and beliefs about drugs, drug use and drug supply were to be represented. Furthermore, such conflict could be productive. It may be needed to change entrenched ways of thinking about the 'drug problem', to facilitate new unheralded societal responses to drug supply, to unseat the dominance of the expert discourse with its focus on solutions which conform to the usual notions of efficacy and effectiveness, and to expose cultural and social taken-for-granted assumptions about drugs and drug use. Jasanoff notes that lay public scrutiny is required to test and contest the framing of issues that experts are tasked to resolve (such that, for example, experts address the right questions) and to ensure that unjust ways of seeing the world are not perpetuated (Jasanoff, 2003). Dodge (2015) highlights how prolonged controversy (in that case about hydraulic fracturing) opened up spaces for alternate responses. Mansbridge et al. argue that activism can be "enclaves [to] create fertile... counter-hegemonic ideas" (Mansbridge et al., 2010, p. 7) that would otherwise not surface .

Thinking about conflict within inclusive drug policy discursive processes brings to mind what might be termed toxic narratives (Boswell, 2015). One example is the view that people who use drugs are "junkie scum", who have inflicted this on themselves (selfishly) and are criminals who have lost the right to participate as citizens. Arguably these kinds of 'toxic narratives' are already present in drug policy discussions, but they are made to be polite and acceptable through rationality and logic given the authorised modes of communication at play.[32] This argument would suggest that exposing the discourse, and the underlying discursive and subjectification effects would be productive in unsettling the dominant discourse. At the same time, none of us want vilifying communication as part of a deliberative discursive drug policy process. Distinguishing between a vilifying mode of communication and the content (or knowledge, ideas) that might be regarded by some as 'toxic' seems to be an important distinction. In Boswell's paper (2015) the presence of toxic narratives, that is ideas which are not currently permitted as part of the prevailing discourse (in this case in relation to the nanny state and obesity) facilitated "...a number of net

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[32] Producing people who use drugs as "junkie scum", or as pathologised and sick, or as deviant and irresponsible is an already present subjectification and discursive effect of the neoliberal discourse about drug use, treatment, diagnostic criteria, criminality, harms and risk. (Lancaster, 2015, 2017b).

deliberative and democratic benefits" (p. 314). Bringing to the fore those ideas, knowledges and perspectives that might be currently silenced, or subtly but covertly authorised, seems to us to present an opportunity to enrich and expand thinking about drugs policy. We certainly wish to include narratives that challenge the demand for politeness.[33] This, and further exploring the role of conflict are important for us in understanding the potential (and limits) of discursive over deliberative democracy. In addition we are seeking inclusive discursive processes that do not represent a competition between different, fixed and pre-existing knowledges (be they toxic, scientific or otherwise) but rather discursive processes that open up the process of reasoning (valentine, 2009).

This thinking also aligns with Stengers notion of the "democratic ethic" (Stengers & Ralet, 1997), where struggle is welcomed as legitimate in policy formation. In the example she gives (responding to the AIDS crisis), the design of the policy response did not deny the legitimacy of any objections, and action was legitimised through the controversy between experts (Stengers & Ralet, 1997). Rather than seeking to resolve disruptions to hitherto authorised and legitimate expertise, Stengers argues that a "'true' democracy" would not only accept such disruptions but "acknowledge those events as something it depended upon" (Stengers, 2008, p. 39). Indeed, the participatory role imagined for citizens might not be one where alternative knowledge is presented alongside that of experts but rather one in which their presence "slows the others down", makes "the decision as difficult as possible", and "precludes any shortcut or simplification" (Stengers, 2005, pp. 994,1003). This body of work (along with the work of others, e.g. Arendt, Nancy) keeps open the contestation, and consistent with the notions of emergence and contingency, sees evidence, publics and other constituent material-discursive elements as made (and made multiply) in these processes. Rather than seeing objects, subjects and formats of participatory processes as fixed and given, a key question becomes asking how the constituent elements of 'participation' emerge and are mediated (Chilvers, 2015). How these post-structural ideas integrate with discursive or deliberative processes is our next piece.

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[33] This includes both sides of the polarised drug policy debate: prohibition and legalisation.

5. Conclusions

Drugs policy is at an impasse. The prevailing evidence-based policy (EBP) paradigm has not delivered on its promise. Some may argue this is because it has yet to be fully implemented, others argue that 'evidence' is but one input into policy processes and our goal is to remain alert to how to work within policy processes to encourage/support the role that evidence may play without considering it inevitable. Some argue that the entire notion of EBP is flawed because it negates the multiple ontological politics of drugs. Our effort here, in this paper, is to examine the potential for a more complex arrangement between expert knowledge and democratic participation than what the current EBP paradigm allows, and thus provide opportunities to enhance and reform drug policy.

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